TO THE HONORABLE JUDGES OF SAID COURT

Now comes Clyde Stone and wife Ruby Mae Stone and J. E. Stone and wife Mary E. Stone, and makes this their petition for Writ of Certiorari from the hereinafter set out orders of the United States Court of Appeal for the Fifth Circuit in cause No. 15,542 in said court styled Clyde Stone and wife Ruby Mae Stone, and John Edd Stone and wife Mary Stone, interested parties, Vs. Joe D. Huffstutler, Referee in Bankruptcy, and for same would respectfully show the court the following:

A.

The United States Court of Appeals for the Fifth Circuit made and filed its opinion in the above stated cause on November 25, 1955 as will be found on Page 58 of Transcript of Record, a copy of the opinion being attached hereto. Said opinion is reported in Vol. 227 Federal Reporter (2) 217.

B.

The jurisdiction of the Supreme Court of the United States is sought to be invoked hereby upon the grounds that the Supreme Court of the United States has not heretofore ruled upon the questions involved in this cause.

(I) The judgment of the United States Court of Appeals for the Fifth Circuit for which this Writ of Certiorari is sought was made and entered on November 25, 1955.

(II) The order denying the petition for rehearing was made and entered on December 27, 1955.

(III) That this court has authority to review the judgment or decree in question by Writ of Certiorari in accordance with title 11 sec. 47 (c) U. S. C., to wit: "The Supreme Court of the United States is vested with jurisdiction to review judgments, decrees, and orders of the United States Courts of appeals in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted." And in accordance with

title 28 sec. 2101 (c) U. S. C. which provides as follows: "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certioari for a period not exceeding sixty days."

C.

The question presented for review is whether or not petitioners are interested and aggrieved parties in said cause, as same is defined in title 11 sec. 67. (c) U. S. C.

D.

This case involves titles 11 sec. 67 (c) U. S. C. which provides that "A person aggrieved by an order of a referee may, within ten days after the entry thereof, or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest."

E.

J. E. Stone Lumber Company, a corporation, filed a voluntary petition in Bankruptcy on September 4, 1953, and was referred to Joe D. Huffstutler, referee in Bankruptcy and Respondent herein, on that date for administration. An adjudication was entered on September 4, 1953. On March 24, 1954, the Department of Internal Revenue filed a claim in the Bankruptcy proceedings in the amount of $26,771.96, for income taxes against the assets of the bankrupt corporation. The said taxes were for the years of 1947, 1949, and 1950, having been assessed prior to the filing of the claim in the bankrupt court, against Clyde Stone and wife, Mrs. Clyde

(Ruby) Stone, and J. E. Stone and wife, Mrs. J. E. (Mary) Stone, petitioners. The said income taxes for the years of 1947 and 1949 in the amount of $25,254.92 were assessed against the petitioners individually as earnings from J. E. Stone Lumber Company, a partnership which was incorporated under the laws of the State of Texas on August 4, 1949, as J. E. Stone Lumber Company, a corporation, whereby the said corporation took over all the assets of the partnership as well as the liabilities. J. E. Stone and Clyde Stone were the only partners in the Partnership of J. E. Stone Lumber Company and the only stockholders in said corporation.

The claim of the Department of Internal Revenue was denied on October 20, 1954, by the Referee in Bankruptcy and the Petitioners as interested parties made application for a review to the U. S. District Court, which petition for review was denied on January 18, 1955 from which order the petitioners appealed to the United States Courts of Appeals of the Fifth Circuit and on which appeal the court entered its judgment and order to dismiss, as unauthorized the petition for review from the Bankrupt Court to the U. S. District Court.

G.

The Petitioners have relied upon title 11 sec. 67 (c) U. S. C. as their basis as interested and aggrieved parties, and as basis for Federal Jurisdiction for its Petition for Review from the order of the Bankrupt Court to the United States District Court.

For appeal from the U. S. District Court to the United States Court of Appeals, the Petitioners relied upon title 11 sec. 47 (a) U. S. C. which provides the following: "The United States courts of appeals, in vacation, in chambers, and during their respective terms, as nor or as they may be hereafter held, are invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdiction in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: Provided, however, That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury

shall extend to matters of law only: And provided further, That when any order, decree, or judgment involves less than $500., an appeal therefrom may be taken only upon allowance of the appellate court."

H.

The reasons relied upon for the allowance of the Writ of Certiorari are that the petitioners were assessed individually for the same income taxes for which the claim was filed by the Internal Revenue Department in the Bankrupt Court against J. E. Stone Lumber Company, a corporation, Bankrupt. That the denial of this claim by the Bankrupt Court in effect and actuality made the petitioners liable for said taxes and said petitioners were thereby directly affected and aggrieved by the action of the bankrupt court and are interested therein.

The denial by the Bankrupt Court for the collection of the said income taxes from the assets of the Bankrupt Corporation was in reality to make the petitioners personally liable for said income taxes.

I.

A copy of the opinion of the United States Court of Appeals delivered upon rendering of the judgment sought to be reviewed is attached hereto.

J.

A copy of the Judgment of the United States Court of Appeals for the Fifth Circuit of which review is sought is attached hereto.

WHEREFORE Petitioners pray that a Writ of Certiorari be granted and that a review be had of the order of the United States Court of Appeals for the Fifth Circuit in this cause.

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